

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-003251

02/13/2012

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
Y. Gano
Deputy

IN RE THE MATTER OF
EDNY MADRID

RICHARD S FREGIN

AND

ISMAEL FLORES

ISMAEL FLORES
9057 N 47TH DRIVE
GLENDALE AZ 85302

AG-CHILD SUPPORT-SOUTH
CENTRAL OFFICE
DOCKET-FAMILY COURT CCC
OFFICE OF PUBLIC DEFENSE
SERVICES-CCC

MINUTE ENTRY

Courtroom 601 - CCB

3:01 p.m. This is the time set for Return Hearing on the Post-Decree Petition to Modify Child Custody, Parenting Time and Child Support filed by Respondent on November 14, 2011. Petitioner/Mother, Edny Madrid, is present with counsel, Richard Fregin. Respondent/Father, Ismael Flores, is present on his own behalf.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

On the Court's own motion,

IT IS ORDERED directing the Clerk's Office to change the name on the caption for Petitioner/Mother from Edny Madrid to **Edny Marquez**.

Discussion is held with the Court regarding the status of the case.

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IT IS ORDERED granting Petitioner's Motion to Dismiss as it relates to Respondent's request to modify legal custody, and denying the Motion to Dismiss as it relates to Respondent's request to modify parenting time and child support.

Discussion continues.

COURT APPOINTED ADVISOR

THE COURT FINDS it appropriate to appoint a Court Appointed Advisor in this case. Therefore,

IT IS ORDERED that a Court Appointed Advisor be appointed in this matter through the Office of Public Defense Services. A separate minute will issue. The fee for the Court Appointed Advisor is \$500 to be split equally by the parties.

The issues that the Court Appointed Advisor should consider are Respondent/Father's assertion that his work schedule does not allow him to exercise parenting time according to the current parenting time schedule; Respondent/Father's concern that Petitioner/Mother is not supportive of his relationship with the parties' minor child; Respondent/Father's allegation that Petitioner/Mother uses inappropriate language and exposes the minor child to inappropriate things; Petitioner/Mother's allegation that Respondent/Father has caused disappointment in the minor child by failing to exercise the parenting time to which he is already entitled; Petitioner/Mother's concerns about Respondent/Father's sense of responsibility and his willingness to get the minor child to school on time, make sure the minor child completes her homework, and complete the other tasks required on weekdays; Petitioner/Mother's concerns about the minor child's sleeping arrangements at Respondent/Father's home; and each party's denial of the allegations made by the other party.

Discussion continues.

EVIDENTIARY HEARING SETTING

IT IS ORDERED:

1. An evidentiary hearing on the Post-Decree Petition to Modify Child Custody, Parenting Time and Child Support will take place as follows:

a. **Date** – August 7, 2012

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b. **Time** – 9:30 a.m.

c. **Location** – Maricopa County Superior Court
Central Court Building
201 W. Jefferson
Courtroom 601
Phoenix, Arizona 85003

The only issue to be addressed at hearing is parenting time, including Respondent/Father's request for a holiday and vacation parenting time schedule that would entitle him, among other things, to two weeks of vacation parenting time every summer and to take the minor child out of state.

Because this is a IV-D case, the issue of child support will be dealt with in separate proceedings.

2. YOU AND, IF APPLICABLE, YOUR ATTORNEY SHOULD **READ EVERYTHING THAT FOLLOWS WITH GREAT CARE**. FAILURE TO DO SO MAY LIMIT WHAT YOU WILL BE ALLOWED TO SAY AND WHAT EVIDENCE YOU WILL BE ALLOWED TO PRESENT AT THE HEARING.

3. **Time Set Aside for You** – The Court has set aside **90 minutes** for this hearing. You will be allowed one-half of that time to present your case. Ariz. R. Fam. L. P. 77(C)(5). For each hour of hearing time, the Court generally allocates 25 minutes to each party. This includes your own testimony; testimony of other witnesses from whom you would like the Court to hear; cross examination of the other party and the other party's witnesses; objections to any of the other party's evidence; and any opening statement, closing argument, or other argument that you choose to make.

4. **Findings of Fact and Conclusions of Law** – You may request findings of fact and conclusions of law regarding the following issues, if they are contested: child custody, relocation requests, spousal maintenance, community property, community debt, and child support. To request findings of fact and conclusions of law, you must file a written request with the Court before the evidentiary hearing. If you do so, the Court will include findings of fact and conclusions of law in its final, written decision.

If either party asks the Court to make findings of fact and conclusions of law regarding any issue, then each party must file written proposed findings of fact and conclusions of law regarding all such issues twenty days before the hearing. The proposed findings also must be

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submitted in an electronic form (preferably Microsoft Word) that can be edited. **The proposed findings and conclusions must be submitted as an attachment to the Prehearing Memorandum** (the Prehearing Memorandum is discussed below). **If you fail to do this, you will be deemed to have waived a request for such findings and conclusions.**

5. **Additional Time** – If you think additional time needs to be set aside, you must request it by filing a motion not later than 30 days before the hearing date stated above. That request must include a reasonable explanation for the request **ALONG WITH** a list of each witness that you intend to have testify, a statement that describes what you expect each such witness to say, and an estimate of the amount of time you think will be necessary for that witness to testify. Because of the large number of cases assigned to this Division, it is very difficult to reschedule hearings. Therefore, requests for additional time will be granted only in extraordinary circumstances.

6. **Continuances** – Requests to continue (or postpone) the hearing are usually denied. If you think that a postponement is necessary, the request must be made by motion as far in advance of the hearing as possible, and that motion must present very compelling reasons for the request. Simply stating “I need more time to prepare” is not sufficient.

The party who files such a motion shall disclose the existence of all previous hearing postponements (or continuances) that have been granted by including a statement in the caption, immediately below the title of such motion that identifies it as the first, second, third, etc. requested extension, e.g., "MOTION TO CONTINUE HEARING DATE (Second Request)".

Generally, merely stating in the motion that the other party and you are trying to reach a settlement, without any specifics about the subjects of disagreement and what has so far prevented agreements from being reached, will not be sufficient. Before filing such a motion, you should make a reasonable attempt to ask the other party (or that party's attorney, if there is one) whether that party agrees or disagrees about a postponement, and then state that party's position in the motion. Even if the other party agrees to the postponement, the motion must still provide sufficient reasons for the request.

VERY IMPORTANT
What You Need to Do Before the Hearing

1. **Disclosure** -- You must tell the other party, in writing, everything that you will ask the Court to consider when deciding your case. Disclosure includes the following:

a. **Witnesses** – You must prepare a list of the witnesses whom you intend to present to testify on your behalf. The list must include the name, address (if known), and

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telephone number (if known) of each witness and a reasonable description about what you expect that witness to say. The list must be mailed or hand-delivered to the other party and to the Court at least 30 days before the hearing date listed above. At the end of the list, you must certify the manner in which you provided the list to the other party.

b. **Exhibits** – If you want the Court to consider anything in writing or that can be copied onto paper (such as e-mails, text messages, and photographs), you must do the following: (i) prepare a list of each such item, (ii) copy each such item, and (iii) provide a copy of the list and a copy of each item on the list to the other party at least 15 days before the hearing date listed above. At the end of the list, you must certify the manner in which you provided the list and copies of everything listed to the other party.

In addition, a complete set of those exhibits must be delivered to the Clerk of this Division at least 7 days before the hearing date listed above so that the Clerk can “mark” the exhibits, i.e., assign the “official” numbers to those exhibits. If you do not do so, then each of your exhibits will have to be marked during the hearing. That will take time, and the time spent doing that will come out of the time allocated to you.

c. **Affidavit of Financial Information** – At least 15 days before the hearing date listed above, you must file with the Court an Affidavit of Financial Information. In addition, at the same time, you must provide a copy of that Affidavit and all attachments specified in the Affidavit to the other party. The form to be used can be found on the Internet at this Court’s website.

d. **Expert Witnesses** – Expert witnesses are generally people with specialized training, education, or expertise, such as psychologists or accountants. If you intend to have an expert witness testify on your behalf, you must provide the name of the expert witness and the subject matter of his/her testimony to the other party not less than 45 days before the scheduled hearing date.

These requirements regarding expert witnesses do not apply to court-appointed parenting coordinators, Court Appointed Advisers, and other court appointees who submit written reports to the Court and the parties in advance of the hearing. You will be permitted to have that person testify as you would any other witness, so long as you have included that person on your list of witnesses. Whether or not you ask that person to testify on your behalf, if you want the Court to consider any report that person wrote, you must include it on your list of exhibits.

2. **Discovery** – All discovery (for example, interrogatories, requests for documents, and depositions) must be completed at least 20 days before the hearing date listed above.

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a. For interrogatories and document requests, “completed” means that you must send them to the other party **so that the responses will be due at least 20 days before the hearing date**. Generally, that will mean that the deadline for you to send interrogatories and document requests to the other party will be 65 days before the hearing date.

b. Any deposition transcripts, interrogatory answers, or written responses to document requests that you want the Court to consider should be listed on your list of exhibits.

c. You must comply with any reasonable request from the other party for written consents or releases that will allow the other party to obtain records and other documents that the Court may need to consider, including records from a bank or other financial institution where you have an account, a company including present and past employers, or health care providers including medical professionals who have treated you.

i. A party making such a request must have a reasonable basis for doing so and may not use this requirement as an opportunity to conduct a fishing expedition in the hope that something useful may turn up.

ii. If a party acts unreasonably, either when making such a request or when responding to it, in a way that forces the other party to incur any expense that could have been avoided, the party who acts unreasonably may be required to reimburse that expense.

3. **Prehearing Memorandum (Mandatory)** – At least 7 days before the hearing date listed above, you must provide the Court with a Prehearing Memorandum. You must also provide a copy to the opposing party unless that party has an attorney, and in that event, the copy must be provided to that attorney. That Memorandum should specify in detail what you want the Court to do and explain why that is reasonable. At a minimum, the Memorandum should include at least the following sections:

a. A **summary** of the issues for which you want rulings from the Court (such as custody, child support, parenting time or visitation, division of property, division of debts, spousal maintenance, and so forth).

b. If there is a disagreement about **parenting time**, your Memorandum should include the specific, detailed parenting plan that you want the Court to adopt, including regular, holiday, and vacation parenting time. Forms for parenting time can be found on the Internet, and the completion and attachment of such a form to your Memorandum will be sufficient.

c. Your Memorandum should include your final list of witnesses.

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- d. Your Memorandum should include your final list of exhibits.

CRITICAL NOTE TO PARTIES: If there is any issue about which you want the Court to make a ruling, and you fail to identify it in your Prehearing Memorandum, or if you fail to submit a Prehearing Memorandum altogether, unless you have a very compelling excuse for that failure, you may be deemed to have waived that issue. Submitting a Prehearing Memorandum on the date of the hearing is the equivalent of not submitting one at all.

This Division is eliminating the practice of asking for a Joint Prehearing Statement. In its place will be the separate Prehearing Memorandum described above. If both sides think that it would be beneficial to submit a Joint Prehearing Statement, that will be acceptable so long as that Joint Prehearing Statement is timely submitted and it complies substantively with the requirements listed above.

4. **Attorney's Fees** – If a party requests an award of attorneys' fees and costs, the request should be noted in a single sentence in the Prehearing Memorandum along with citations to the legal authority on which the request is based.

5. **Parental Education Program** – If you and the other party have a natural or adopted minor child in common who is under the age of 18, then, if you have not done so already, at least 7 days before the hearing date listed above, you must file with the Court proof that you have complied with the Parental Education Program requirements of A.R.S. § 25-351 and following.

**What Happens When
A Party Does Not Comply with These Requirements**

If you do not appear for the hearing on the date and at the time stated above, or if you do not comply with one or more of the requirements listed above, and you cannot provide a reasonable excuse for doing so, the Court may penalize you in one or more ways. Penalties may include a refusal to allow you to present certain evidence, a financial penalty, or a hearing that proceeds as if you have consented to what the other party has requested (i.e., proceeding by default). See Ariz. Rs. Fam. L. P. 71(A); Maricopa Cty. Sup. Ct. R. 6.2(e).

Summary of Important Deadlines

Last day to identify **witnesses** – 30 days before the hearing date.

Last day to identify and provide copies of **exhibits** – 15 days before the hearing date.

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Last day to deliver exhibits to the Court's Clerk – 7 days before the hearing date.

Last day to file **Affidavit of Financial Information** (and provide copy to the other party) – 15 days before the hearing date.

Last day to provide copy of **expert witness** reports or declarations to the Court and the other party – 45 days before the hearing date.

Last day to **complete discovery** – 20 days before the hearing date.

Last day to file **Prehearing Memorandum** (and provide copy to the other party) – 7 days before the hearing date.

Last day to file proof of completion of **Parental Education Program** – 7 days before the hearing date.

Discussion continues.

By agreement of the parties,

IT IS ORDERED that Respondent/Father's weekend parenting time shall begin on Saturdays at 8:00 a.m. instead of Fridays at 6:00 p.m. because of his school schedule.

Discussion continues.

By agreement of the parties,

IT IS ORDERED that Respondent/Father may have telephonic contact during the week with the minor child on Mondays and Wednesdays at 7:00 p.m. by calling Petitioner/Mother's phone. Petitioner/Mother shall ensure that the minor child is available to take the calls.

3:54 p.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.